

Jobs Creation Act of 2003

On January 22 the Governor signed into law Assembly Bill 655. Also known as the Jobs Creation Act of 2003, the new law implements the most aggressive regulatory reform package seen in Wisconsin's recent history. It is designed to lower regulatory burdens without reducing Wisconsin's strong environmental standards.

The act includes major reforms regarding permitting, rule making procedures, state air emission standards, state implementation plans (SIPs) and nonattainment recommendations.

Although the act includes requirements for all state agencies, the following information will concentrate on the air permitting sections of the new law, with some brief information on rulemaking changes.

Air Permitting Reforms

The act modifies Chapter 285, Wis. Statutes, that regulates air quality. The following are key air permitting provisions:

- ✓ Direct the Department of Natural Resources to promulgate new permit exemptions for sources that do not present any meaningful air quality threat.
- ✓ Create a registration permit program for small sources to avoid needless permit negotiations on simple processes.
- ✓ Expand the use of general permits for similar activities conducted by multiple companies.
- ✓ Allow persons to petition for exemptions, and registration and general permits; and require DNR to act on the petition within 30 days.

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New From the Small Business Clean Air Assistance Program...

✓ **USEPA's Consolidated Screening Checklist for Automotive Repair Facilities Guidebook - limited copies**

✓ **Air Permit Compliance Calendar**

✓ **Documenting Your Environmental Management Plan**

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call (608) 264-6153
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Don't Forget to Order Free Compliance Calendar!!

In 2003 you may have received the Air Permit Compliance Calendar from our program. The calendar provides a single place to keep your key air pollution records and includes monthly or other periodic reminders about certain regulatory deadlines.

In order to continue your records, as required in some rules, don't forget to order another calendar for the next 12 months. These calendars were printed with generic months, so you could start on any month and use it for 12 months before requiring a replacement. ❖

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Hot Topics in DNR's Air Program

Check them out at: www.dnr.state.wi.us/org/aw/air/hot/

DNR's Air Permit Improvement Initiative

This is another installment of our series on Wisconsin DNR's Air Permit Improvement Initiative. The purpose of this initiative is to develop and implement ways to improve DNR's efficiency while meeting the environmental protection needs of Wisconsin's citizens.

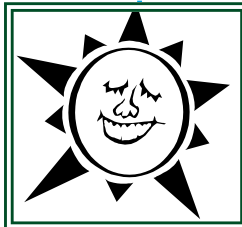
New Source Review (NSR) Retooling Team

The NSR Retooling Team has met the DNR's goal of taking a proposed rule to the Natural Resources Board for approval for public hearing. Public hearings were scheduled for January 22, 23, 28 and 29 around the state.

The process began by translating the federal NSR Rule into draft language for NR 405 of the Wisconsin Administrative Code. The NSR retooling advisory group then identified 16 issues that need to be resolved. These issues were grouped under the respective elements of the federal NSR rule: Applicability Test/Baseline, Clean Units, Pollution Control Projects, and Plant-wide Applicability Limits. The following are very brief summaries of how these elements are going forward in the draft rule.

1. Applicability Test/Baseline

An existing facility wants to make changes, and in order to determine whether they need a NSR they would have to compare their "before and after" emissions related to the project. The old rule specified that the facility would have to look at the 24 months immediately prior to the present time to determine the average annual emission from that time frame, which is called the baseline emissions. Then they would compare the baseline with the "potential" emissions expected after the project is installed. If that change is over a certain level of emissions, set in the rule, the project needs a NSR.



The new rule would allow a company to pick a 24-month period anytime during the past 10 years to determine the most representative annual average emissions. Then the company would estimate the expected actual emissions looking out at the new operations 10 years into the future. If that level of emissions is over a set amount, which hasn't changed from the old rule, then the project needs a NSR.

So, for a source of volatile organic compounds (VOCs) the difference between "before and after" scenarios that triggers a NSR is 40 tons per year.

2. Clean Units

Clean Units will be those that have either gone through the NSR process and designated as meeting Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER) or have controls that are equivalent to BACT/LAER. A clean unit could be changed any number of ways or times during its 10-year designation as a clean unit.

3. Pollution Control Projects (PCP)

The federal NSR rule defined a list of construction projects that are known to have positive environmental benefits that outweigh the fact that emissions of some pollutants may increase due to their installation when compared with the previous operation. Projects defined as a PCP may go forward immediately following a notice submitted to the DNR.

4. Plant-wide Applicability Limits (PAL)

A company that would like a PAL would be issued a NSR permit that includes a cap on total emissions of a certain pollutant. That cap would be based on the baseline emissions referred to previously, with an addition of the level considered a significant modification for that pollutant -

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Asbestos Citation Authority Update

In July, 2003 the state legislature granted the DNR citation authority for its asbestos program. This authority allows the DNR to issue citations for several specific asbestos violations. Citations can be issued for any of the following:

1. failure to notify the DNR of regulated demolition or renovation activities;
2. failure to conduct an inspection prior to demolition or renovation; or
3. not following asbestos landfill disposal requirements

Is this a new requirement?

No. Citation authority is a new tool used to enforce the existing regulations. This enforcement tool was developed because many building owners and contractors were not taking precautions to prevent asbestos air pollution before renovating and demolishing structures.

Who is affected?

The Wisconsin Administrative Code (Chapter NR 447) states that both owners and operators may be responsible if requirements are not met.

Owners include any owner of a regulated facility. A regulated facility is any institutional, commercial, public, or industrial structure. In general, owners of residential structures (homeowners) are not regulated by asbestos air regulations. However, a residential structure may be regulated if:

- ✓ it is part of a larger project (multiple buildings),
- ✓ has ever had an institutional function,
- ✓ will be used for a controlled fire training burn, or
- ✓ has more than four dwelling units.

Even if a home is not a regulated facility, the homeowner is still subject to DNR asbestos disposal requirements.

Operators are defined as any person who leases, operates, controls or supervises the renovation or demolition of the facility in question. This includes asbestos contractors, demolition contractors, general contractors, excavators, landfill operators, and fire departments.

What does this mean to me?

As an owner or operator, you must ensure you are in compliance with state asbestos regulations.

How much are the citations?

Citations are \$500 to \$5,000 per violation, and penalties double to \$1,000 to \$10,000 with repeat offenses within five years.

Renovation and/or Demolition Form Updated

In September 2003, the DNR updated its asbestos demolition/renovation notification form, 4500-113. The form was updated to reflect a new mailing procedure. The DNR's Asbestos Program wants to streamline and centralize processing. The new form should improve clarity. For your convenience, printable electronic versions of Form 4500-113 Rev 9-03 are posted on the DNR's website. Go to:

<http://www.dnr.state.wi.us/org/aw/air/reg/asbestos/asbes8a.htm>

Please Note: If you plan to demolish or renovate a building that may contain or is known to contain asbestos, you must notify the DNR **at least 10 working days** before starting the work, except in emergencies, using the updated form 4500-113.

Need more information?

Mark Davis, DNR's Asbestos Coordinator
(608) 266-3658 ❖

Information On EPA Programs

Environmental Technology Portal

To help those seeking funding opportunities, information and links to programs that assist in environmental technology development and commercialization, EPA launched the Environmental Technology Opportunities Portal (ETOP) on December 31, 2003. ETOP links to governmental and non-governmental programs that foster the use and acceptance of innovative technologies through collaborative recognition and incentives or advocacy and information programs.

ETOP was established as a result of a Congressional mandate through the FY 2003 House Appropriations Conference Report that directed EPA to develop a "one-stop-shop" office to coordinate similar programs that foster private and public sector development of new, cost-effective environmental technologies.

For more information, visit www.epa.gov/etop. ❖

Risk Management Plans

The Risk Management Plan (RMP) renewal deadline is just around the corner. RMP's must be updated at least once every five years. Facilities that filed Risk Management Plans under the Clean Air Act section 112(r) in 1999 are required to update their plans by **June 2004**.

Section 112(r) lists 139 hazardous substances and establishes specific storage thresholds. Anhydrous ammonia is the most common chemical that requires a facility to submit an RMP. These plans can be filed electronically using an EPA computer program called RMP Submit. To find out more information visit:

<http://yosemite.epa.gov/oswer/ceppoweb.nsf/content/index.html>

You can also contact the Resource Conservation & Recovery Act (RCRA), Superfund & Emergency Planning & Community Right-To-Know Act (EPCRA) call center at (800) 424-9346 for more information. ❖

Wisconsin's Small Business Ombudsman

On February 5, 2004 Department of Commerce Secretary Cory L. Nettles announced that Pamela Christenson will serve as the director of the department's Bureau of Entrepreneurship.

From 2000 until her appointment Pam served as the agency's Small Business Ombudsman. Prior to that she coordinated the Small Business Clean Air Assistance Program for six years. Pam has been a tremendous advocate for small businesses throughout those ten years. She will certainly

bring her enthusiasm and dedication to the business community in her new role. Congratulations goes out to Pam in this new endeavor.

If you're a small business seeking assistance to resolve a dispute or are in need of regulatory review or guidance, you can contact Carol Dunn, Acting Small Business Ombudsman at (608) 267-0297. ❖

Air Permit Improvement Initiative

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as mentioned above, the VOC significant modification level is 40 TPY. The company could make changes to any of the emissions units included in the PAL. To remain in compliance with the PAL, a company may need to make reductions of the specified pollutant from other emissions units in order to make changes or additions. There are additional requirements in the event the PAL is renewed or allowed to expire or even increased.

Team Members Involved in Developing Rule

The NSR Retooling team is comprised of representatives from Wisconsin Manufacturers and Commerce, STS Consultants, Department of Commerce, Foley and Lardner, Wisconsin Paper Council, WE Energies, SC Johnson, Kohler Co., Alliant Energy, Bemis Corporation, and DNR.

Next Steps

The group began meeting on December 18, 2003 to discuss how the changes to the major source rules will affect minor NSR permit requirements. Discussions on this topic will take place from the end of January through the end of April. At some point additional representatives of minor sources will also be involved.

Refer to DNR's web page for specific dates and meeting materials. Start at the address in the title of this article and click on "NSR Retooling Advisory Group" under the "Advisory Committees" menu on the left.

DNR Permit Streamlining Team

Internal teams of DNR air program staff worked through the last half of 2003 on the initial phase of their Permit Streamlining effort. This is a brief summary of the activities they have begun thus far.

Pilot Programs

The air program has a number of pilot programs underway. Web page improvement efforts as well as a web-based posting of permit tracking information will be available soon (if not by the time you read this.) A "tickler system" of email reminders for permit holders has been proposed for two deadlines:

renewal applications and compliance certification reports. DNR will also develop a list of "Frequently Asked Questions" to assist both permit reviewers and those submitting applications.

Process Mapping

The permit streamlining group has completed an effort to "map" the permit application and review process. Mapping the process let's the group focus on each individual step in the permit process.

DNR asked a few companies to provide information to the streamlining group on the process each company went through to satisfy all the requirements for a complete application. The complete application trigger is what starts the permit review clock, after which DNR has a set time frame in which to complete the review. One small business was included in the companies surveyed to ensure DNR had a range of experiences.

Data Integration

The air program has a wide variety of databases that store information about permits, compliance and emissions. To improve their efficiency, staff are analyzing these databases to determine how to better organize the information. The goal is to have an integrated information system for the whole program.

Permit Program Analysis

To gauge how the air permit program stacks up, DNR held a number of focus groups with a variety of stakeholders and surveyed 16 other state permit programs. The focus groups were held with permitted sources, consultants, environmental groups, local government and economic development specialists, as well as DNR permit writers and managers. A report of the results of the focus groups and state program surveys was expected to be available in January 2004.

You can find the Permit Streamlining materials on DNR's website at: <http://dnr.wi.gov/org/aw/air/apii/>

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New EPA Web Site and Brochures on Backyard Burning

The EPA is taking action to reduce the open burning of household waste, often referred to as backyard burning. In addition to being a fire hazard, backyard burning is a source of dangerous pollutants, including dioxins, particulate matter, lead, mercury and hexachlorobenzene. Since stringent controls have been placed on municipal, medical and



hazardous waste incinerators, backyard burning has become the nation's largest quantified source of dioxins.

EPA has established a Web Site at:

<http://www.epa.gov/msw/backyard/>

which contains information, links, brochures, presentations and other outreach materials for governments to use with their residents. The brochures can be customized to include local information on backyard burning.

The first brochure, *State and Local Governments Are Key to Reducing Backyard Burning*, encourages state and local government officials to take action to reduce backyard burning in their jurisdictions. It describes the dangers of backyard burning, and provides information on what some jurisdictions are doing to provide waste disposal alternatives and outreach to residents, and to restrict backyard burning through regulations.

The second brochure, *The Hidden Hazards of Backyard Burning*, is aimed at residents, and can be distributed by local governments in their efforts to discourage backyard burning.

EPA also developed a brochure for tribal leaders and one for their residents - *Tribal Leaders Are Key to Reducing Backyard Burning* and *Reducing Backyard Burning in Indian Country*.

To order brochures, contact the National Service Center for Environmental Publications (NSCEP):

✓ online **<http://www.epa.gov/ncepihom/>**

✓ by phone (800-490-9198 or 513-489-8190), or

✓ email (ncepimal@one.net).

Wisconsin Requirements

Did you know that burning any of the following materials is illegal under Wisconsin Administrative Code NR 429.04(1) and NR 502.11(2)?

- | | |
|---------------------------|-----------|
| ✓ wet combustible rubbish | ✓ garbage |
| ✓ oily substances | ✓ asphalt |
| ✓ rubber products | ✓ plastic |
| ✓ treated or painted wood | |

In addition, all local recycling ordinances in Wisconsin require recycling rather than burning recyclable materials (e.g. plastic containers, newspapers, corrugated cardboard, etc.)

The DNR's Open Burning webpage at:

www.dnr.state.wi.us/org/caer/ce/ob/index.htm
has a number of resources including regulations, health effects, alternatives to burning, and much more. ❖

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✓ Require DNR to make permit streamlining a priority; to continually assess its permit program for opportunities to consolidate permits, expand exemptions and make available registration permits, general permits and construction permit waivers; to submit a report to the Legislature within 6 months on its permit streamlining efforts, including related draft rules.

✓ Allow for the construction or installation of equipment prior to obtaining a construction permit in situations where the requirement presents an undue hardship or as otherwise deemed appropriate by DNR. (Permits would still be required for the operation of the equipment.)

✓ Provide a process that allows businesses to appeal proposed monitoring requirements that they deem unreasonable.

✓ Require DNR to issue a "completeness determination" within 20 days of permit application submittal that triggers deadlines for permit action. Once an applicant responds, the DNR has 15 days to review the submittal and may ask for additional information before making the final determination.

✓ Reduce the length of construction permit deadlines and provide for agency accountability for missed deadlines.

✓ Applications for a renewal permit must be submitted at least 6 months before expiration.

✓ Cannot be sued for lack of a permit or required to stop operations so long as renewal permit application was filed on time.

✓ Can commence construction during an appeal of any part of an air permit.

State Air Emission Standards

Provisions in the Jobs Creation Act of 2003 provide additional clarification on when the DNR may exceed federal Clean Air Act mandates and/or requirements. These provisions maintain all of DNR's existing authorities to develop Wisconsin-specific programs (i.e. Wisconsin's hazardous air pollutant rule/NR 445), but make clear that such programs should be consistent with federal programs.

State Rulemaking

The Jobs Creation Act of 2003 requires all agencies to more thoroughly document their reasoning for rules by expanding analysis and related record requirements. Prior to the Jobs Creation Act, agencies were required to reference their authority and provide a short summary of the rule that goes out for hearing. Now, due to agencies having to provide more comprehensive analysis, those affected by proposed rules will have more of an opportunity to assess and comment on regulatory proposals. Some agency requirements found in the rulemaking portion of the Act include:

✓ An explanation of the agency's authority to promulgate the rule.

✓ The analysis and supporting documentation used in preparation of its Small Business Analysis and Economic Impact Reports.

✓ A comparison of similar rules in adjacent states. You can find the complete Act at:

<http://www.legis.state.wi.us/2003/data/acts/03Act118.pdf>



Environmental Virtual Campus

The Massachusetts Institute of Technology (MIT) has created an online tool to help Universities and colleges identify their compliance requirements with environmental regulations. Like business, universities and colleges are faced with a number of environmental regulations that govern their activities. These issues are especially challenging for higher educational facilities due to student and researcher turnover and the wide variety of chemical wastes that are generated.

The Environmental Virtual Campus assists students, staff, and researchers with campus environmental management practices, including both regulatory compliance and non-regulatory "green" environmental practices. This site is organized around nine typical areas on a campus that are normally subject to environmental regulations. These featured areas include:

- A laboratory
- A central hazardous waste storage area (when storing waste for less than 90 days)
- A power/heating plant
- An auto and grounds maintenance area
- A residential area
- A food service area
- A graphic arts/theatre department
- Drains and sewers
- A medical facility

Although developed for universities and colleges, this site can serve as a reference for other industry sectors. The Power Plant section is especially useful for those businesses generating their own power.

To find out more about the Environmental Virtual Campus visit:

<http://www.c2e2.org/evc/home.html>



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